

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
et al.,

Petitioners,

v.

ALAN D. MILLER,

Respondent.

NO. C08-0768 TEH

ORDER GRANTING PETITION  
FOR JUDICIAL APPROVAL OF  
LEVY ON PRINCIPAL  
RESIDENCE

This matter came before the Court on March 31, 2008, on an order to show cause as to why the government's petition for judicial approval of levy on Respondent Alan D. Miller's principal residence – located at 175 Essex Way, Pacifica, California – should not be granted. The order to show cause allowed Miller to file written objections on or before March 10, 2008. To date, Miller has not filed any objections or made any other written appearance in this case. Miller also failed to appear at the March 31, 2008 hearing.

By statute, “[i]f any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand,” the government may collect the unpaid tax “by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax.” 26 U.S.C. § 6331(a). Section 6334 provides in relevant part that, “[a] principal residence shall not be exempt from levy if a judge or magistrate of a district court

1 of the United States approves (in writing) the levy of such residence.” 26 U.S.C.

2 § 6334(e)(1). The government submitted sufficient evidence that notices of liens against  
3 Miller’s principal residence were properly recorded by the San Mateo County Recorder’s  
4 Office.

5 Certificates of assessments and payments, such as those submitted by the government  
6 in this case, are “probative evidence in and of themselves and, in the absence of contrary  
7 evidence, are sufficient to establish that . . . assessments were properly made.” *Koff v.*  
8 *United States*, 3 F.3d 1297, 1298 (9th Cir. 1993) (per curiam) (citation omitted). Miller has  
9 failed to submit any contrary evidence.

10 In addition, although counsel for the government represented at the hearing that Miller  
11 might be able to pay the taxes owed by sending a check drawn on proceeds received from  
12 stock sales, the government informed the Court by telephone on April 1, 2008, that it had  
13 received notice that no such check was forthcoming. Again, Miller has submitted no  
14 evidence to the contrary.

15 Thus, Miller has failed to meet his burden in opposing the government’s petition for  
16 judicial approval of levy on his principal residence: He has failed to file “an objection within  
17 the time period required by the court raising a genuine issue of material fact demonstrating  
18 that the underlying tax liability has been satisfied, that the taxpayer has other assets from  
19 which the liability can be satisfied, or that the Service did not follow the applicable laws or  
20 procedures pertaining to the levy.” 26 C.F.R. § 301.6334-1(d)(2). Under governing  
21 regulations, the Court is therefore “expected to enter an order approving the levy of the  
22 principal residence property.” *Id.*

23 Accordingly, with good cause appearing, IT IS HEREBY ORDERED that the petition  
24 for judicial approval of levy on a principal residence is GRANTED. The Internal Revenue  
25 Service may levy upon Alan D. Miller’s interest in the property located at 175 Essex Way,  
26 Pacifica, California, to satisfy part or all of Miller’s unpaid tax liabilities for the 1989, 1990,  
27 1991, 2003, 2004, and 2005 tax years. Such levy may be executed by any authorized officer  
28 of the Internal Revenue Service. The Clerk shall enter judgment and close the file.

1 IT IS FURTHER ORDERED that the Clerk shall serve copies of this order and the  
2 judgment on Alan D. Miller, 175 Essex Way, Pacifica, California 94044-3915.

3  
4 **IT IS SO ORDERED.**

5  
6 Dated: 04/03/08



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THELTON E. HENDERSON, JUDGE  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATE OF AMERICA AND  
MARTHA LEVY et al,

Plaintiff,

v.

ALAN D MILLER et al,

Defendant.

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Case Number: CV08-0768 TEH


**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 3, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Alan D. Miller  
175 Essex Way  
Pacifica, CA 94044-3915

Dated: April 3, 2008

  
Richard W. Wieking, Clerk  
By: R.B. Espinosa, Deputy Clerk